

#10 9200

THE TECHNOLOGY LAW OFFICES OF VIRGINIA

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Corporate, Patent & Trademark,
Computer & Software, Licensing &
Joint Venture Law; Venture Capital
Employment Law

James W. Hiney
Admitted to practice in
the District of Columbia and
the Commonwealth of Virginia

Director, Office of Petitions
U. S. Patent & Trademark Office
2011 So. Clark Place
Crystal Plaza 2, Room 1 BO 3
Mail Room
Arlington, VA 22202

October 21, 2002

Re: Patent Application Serial No. 09/695,443

Dear Madam/Sir,

This letter is in the nature of a complaint concerning the status of the above case in which I am the attorney of record.

As will be quickly evident from the attached documents, this application should have been returned to the Examining Group right after the decision by Ms. Brown last September. As you will note, she states in the decision "The application is being returned to the Initial Patent Examination for further processing with a filing date of June 19, 2001, using claims 1-32 and the declarations filed on that date."

As you will see from my letter of Inquiry submitted in September, there has been no action on this case since September 2001.

Also attached is a copy of the just received Notice of Abandonment based on a failure to timely reply to the Decision on Petition. In the matter of the Decision, I did place a call to Ms. Brown upon receiving the it and told her we never got the postcard back from the Processing Division so we assume they lost that as well as the claims. She said that the case would now automatically be processed with the new filing date of June 19, 2001. Of course the Notice of Abandonment is not proper as the case was in condition for examination after the Decision.

What is going on? I cannot raise anyone on the phone at either your office or the people at Initial processing (not surprising!). If you cannot help me then I ask that this letter and attachments be sent to the Commissioner's Office. If I cannot gain any assistance there then I will be left with no alternative but to file an action in Federal District Court requesting relief.

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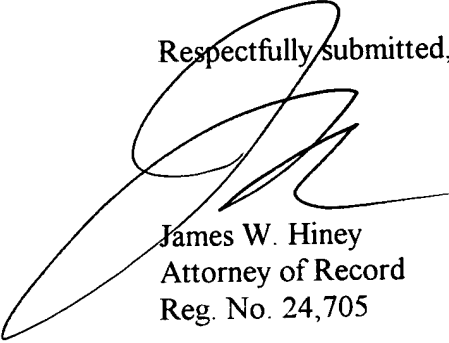
OFFICE OF PETITIONS

It seems as if the Patent Office cannot get any worse but somehow manages to attain a level of indifference and absurdity unimaginable in years past. I cannot raise anyone on the phone nor get the Office to do what it is supposed to do.

This Notice of Abandonment should be immediately withdrawn and I would request, since the Office has now cost us an additional year, that the term for any patent issuing hereon be extended the amount of time lost.

The undersigned will be out of town until Monday, October 28th, 2002, but wants a reply mailed to the above address prior to that.

Respectfully submitted,



James W. Hiney
Attorney of Record
Reg. No. 24,705

Certificate of Mailing

I, James W. Hiney, do hereby certify that the above letter, together with attachments of the Sept. 10, 2001 decision on Petition, a letter of inquiry and the Notice of Abandonment, was mailed, Express Mail Postage Prepaid, on this 21st day of October, 2002, to the Director of Petitions, U. S. Patent Office.



James W. Hiney



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/695,443		Peter Herbert Cherouny	PC 10

James W Hiney Esq
1872 Pratt Drive
Suite 1100
Blacksburg, VA 24060

CONFIRMATION NO. 2611
ABANDONMENT/TERMINATION
LETTER
OC000000008824637
OC000000008824637

Date Mailed: 09/20/2002

NOTICE OF ABANDONMENT

Decision on Petition

The above-identified application is **abandoned** for failure to timely reply to the Decision on Petition mailed on 05/04/2001.

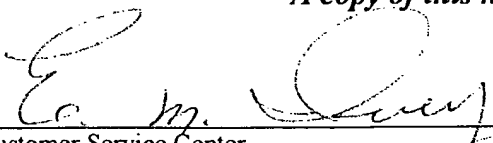
A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(d).

Any questions concerning petitions to revive should be directed to "Office of Petitions" at (703) 305-9282.

*A copy of this notice **MUST** be returned with the reply.*


Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 1 - ATTORNEY/APPLICANT COPY

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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/695,443		Peter Herbert Cherouny	PC 10

James W Hiney Esq
1872 Pratt Drive
Suite 1100
Blacksburg, VA 24060

CONFIRMATION NO. 2611
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Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 09/695,443)
Inventor: Cherouny et al)
For: Electronic Programmable Speed)
Limiter)
Filed: Oct. 24, 2000/June 19, 2001)

Honorable Commissioner of Patents & Trademarks
2011 So. Clark Place, Crystal Plaza 2, Room 1 BO 3
Mail Room, Arlington, Virginia 22202

INQUIRY AS TO STATUS

Accompanying this inquiry is an attached copy of a decision mailed Sept. 10, 2001, as denying applicants their justly due filing date of Oct. 24, 2000 and erroneously granting a filing date of June 19, 2001.

The Decision states that the case was returned to the Initial Patent Examination Division for further processing. That the decision was totally based on illogic and faulty reasoning is beside the point at this juncture. A check electronically of the status produced a record that the serial number 09/695,443, has no status and that it has been cancelled.

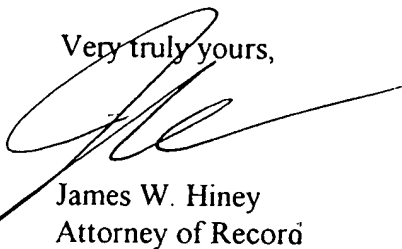
With the Patent Office falling into total disrepair, an opinion shared by most patent practitioners, one can only surmise what has happened to the application. It was supposed to be sent back to the Initial Patent Examination Division and be processed with the different filing date. One surmises that it was not. Where is it?

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This inquiry is being sent to the Commissioner's Office in the hope that there might be someone there under the present administration that can QUICKLY reply to the undersigned with a response that means something and that a follow up might be given to the appropriate examination group if it is found that the case has been sitting in someone's desk or coat closet. If the reader of this inquiry detects a level of frustration on the part of the undersigned that means that his or her mental faculties are still functioning.... a condition that seems rare in the Patent Office.

Please send the undersigned a reply by either mail or facsimile within 10 days after receipt of this inquiry.

Very truly yours,

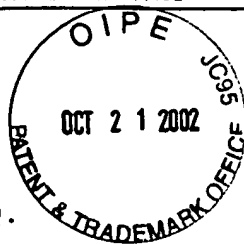


James W. Hiney
Attorney of Record
Reg. No. 24,705
1872 Pratt Drive, Suite 1100
Blacksburg, VA 24060
(540) 552-4400

August 3, 2002



UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 7

JAMES W. HINEY ESQ.
1872 PRATT DRIVE
SUITE 1100
BLACKSBURG, VA 24060

COPY MAILED

SEP 10 2001

In re Application of
Cherouny, et al. :
Application No. 09/695,443 : ON PETITION
Receipt Date: October 24, 2000 :
Attorney Docket No.: PC 10 :
For: ELECTRONIC PROGRAMMABLE SPEED :
LIMITER :

OFFICE OF PETITIONS

This is a decision on the petition filed June 19, 2001, requesting that the above-identified application be accorded a filing date of October 24, 2000.

The application was deposited on October 24, 2000. However, on May 4, 2001, Initial Patent Examination Division mailed a notice requiring at least one claim in compliance with 35 U.S.C. 112, second paragraph, and stating that the filing date of the application would be the date of receipt of at least one claim.

In response, the present petition was filed wherein petitioners argue that 32 claims were filed on October 24, 2000. In support, the petition is accompanied by a declaration signed by petitioners' attorney, James W. Hiney, stating his belief that he deposited the application in Express Mail service on October 24, 2000, with 32 claims.

The petition is further accompanied by claims 1-32 and newly signed declarations by the inventors.

The argument and evidence have been considered, but are not persuasive. The USPTO file is the official record of the papers originally filed in this application. A review of the official file reveals that 19 pages of specification were filed on October 24, 2000. The USPTO file indicates that no claim or abstract was filed on October 24, 2000, since no claim (other than those supplied on June 19, 2001) or abstract is present in the file. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that counsel believes the claims were among the papers he mailed is not more persuasive than the actual papers shown to have been received by the official file.

The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See section 503, Manual Of Patent Examining Procedure (MPEP 503).

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No postcard receipt has been submitted in this case. If petitioners have a postcard receipt showing that 32 claims were filed on October 24, 2000, the postcard receipt or a copy thereof should be supplied.

At the present time, the petition must be dismissed. However, this decision is made without prejudice to reconsideration. If petitioners have a postcard receipt acknowledging receipt of 32 claims on October 24, 2000, the postcard receipt or a copy thereof should be supplied accompanied by a letter requesting reconsideration of this decision. No additional petition fee is required for such a request.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

The application is entitled to a filing date of June 19, 2001, the date claims 1-32 were filed.

Further correspondence with respect to this matter should be addressed as follows:

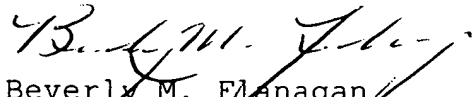
By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

The application is being returned to Initial Patent Examination Division for further processing with a filing date of June 19, 2001, using claims 1-32 and the declarations filed on that date.

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy